IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2488 OF 2018

Pabrai Investment Fund 3 Ltd. and Ors.	}	Petitioners
versus		
Ministry of Finance and Ors.	}	Respondents

Mr.Bimal Rajashekhar for the petitioners.

Mr. P. C. Chhotaray with Mr. Suresh Kumar for respondent no. 2.

Ms. Jyoti Sinha and Mr. Manish Chhangani i/b. M/s. Khaitan and Co. for respondent no. 3.

Ms.Melind Colaco-Associate Manager of BSE Ltd. present.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATE :- OCTOBER 10, 2018

P.C. :-

1. We have heard the petitioners' counsel at length as also Mr.Chhotaray appearing for the Revenue. The third respondent-Bombay Stock Exchange (BSE) has been impleaded by the petitioners knowing fully well that the instructions given by the petitioners through their Fund Manager to the Broker-Kotak Securities Limited to buy approximately 65 lakh shares of one entity/company called KRBL Limited on the platform of

respondent no. 3 is the trigger point. It is claimed that there are about 350 international investors, who have acted on par with the petitioners. That is how the petitioners' Fund Manager bought 64,94,491 shares of KRBL Limited on the platform of respondent no. 3. The relevant documents are annexed as Exhibit-'B'.

2. It is stated that the amount towards this acquisition of shares was transferred by the petitioners' Fund Manager. The amount has been forwarded to respondent no. 3. Thereafter, there were certain issues raised and it appears from the petition itself that the Enforcement Directorate (ED) stepped in, carried out investigations by seeking information, including from petitioner no. 2. Pursuant thereto, the ED directed the BSE to annul the trade in the shares of KRBL Limited and refund the money back to the petitioners. The petitioners received from respondent no. 3 the money, but there was a shortfall of approximately Rs.38 lakhs. That is taken to be the security transaction tax collected from the petitioners and transferred to the Income Tax Department.

3. The present petition is filed to seek recovery of that amount from the Department of Income Tax styling it as a claim of refund. On a perusal of the writ petition, however, it is evident that the

refund was made of the amount and forwarded for trading in the shares by the petitioners, by the BSE. It is the BSE, who, according to the petitioners, deducted the tax known as security transaction tax and refunded the balance amount to the petitioners. The amount of the security transaction tax deducted by the BSE has been remitted to the Income Tax Department by the BSE. Therefore, the stand of the Income Tax Department and from the pleadings in the writ petition itself is that it is the BSE who will have to seek refund and the petitioners cannot seek refund from the Income Tax Department and by impleading the BSE as party respondent. This stand taken by the Income Tax Department appears to be correct. Nothing more is required other than the pleadings in the writ petition to come to a conclusion that it is respondent no. 3 who will have to seek the refund, if at all it is of the view that the security transaction tax collected and remitted ought to be refunded. In the event the BSE does not take such steps, the petitioner can bring an action against the BSE in this court or in any competent civil court and seek a decree in that sum, if so advised. We do not think that such a dispute, which is purely factual, can be resolved in writ jurisdiction. Presently, the stand of the Income Tax Department, based on the pleadings in the writ petition that it is not their obligation to refund any tax amount to the petitioners, as no tax is collected by the Department from the petitioners, is accurate. That justifies the disposal of the writ petition by holding that the petitioners have alternate efficacious remedies so as to recover the sum allegedly erroneously retained by the BSE. None prevents the BSE to adopt appropriate proceedings, including moving the Income Tax Department with the claim of refund.

4. With this clarification, the writ petition need not be kept pending. It is disposed of.

(B. P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**

Jayant Vishwanath Salunke

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